

WINSTON & STRAWN

SUITE 5000

15069

ONE FIRST NATIONAL PLAZA

RECORDATION NO.

Filed & Recorded

FREDERICK H. WINSTON (1853-1886)

SILAS H. STRAWN (1891-1946)

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WRITER'S DIRECT DIAL NUMBER

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October 7, 1986

6-287A034

Honorable Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. McGee:

No.
Date OCT 14 1986
Fee \$ 10.00
ICC Washington, D.C.

On behalf of Heller Financial, Inc., I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, an enclosed Assignment Agreement entered into as of October 7, 1986, which is a primary document, not previously recorded.

The parties to the enclosed document are:

Istel Rail Corporation - Assignor
55 Francisco Street
San Francisco, California 94133

Heller Financial, Inc. - Assignee
105 West Adams Street
Chicago, Illinois 60603

100 OFFICE OF
THE SECRETARY
OCT 14 10 26 AM '86
MOTOR OPERATING UNIT

The said document covers and grants to Heller Financial, Inc. as continuing collateral security all of Istel Rail Corporation's interest in that certain Agreement (Flatcars) dated September 12, 1980 between Istel Rail Corporation and Providence and Worcester Company and the related letter agreement of even date therewith.

A short summary of the document to appear in the Index is as follows:

"Covers all of Istel Rail Corporation's interest in that certain Agreement (Flatcars) dated September 12, 1980 between Istel Rail Corporation and Providence and Worcester Company and the related letter agreement of even date therewith."

Countersignature of Karen Horton

*New
Memorandum
for this*

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Honorable Noreta R. McGee
Interstate Commerce Commission
October 7, 1986
Page Two

Enclosed is our check in the amount of ten dollars (\$10.00) in payment of the filing fee.

Once this filing has been made, please return to bearer the stamped counterparts of the document not needed for your files, together with the fee receipt, and the letter from the ICC acknowledging the filing.

Very truly yours,

James W. Doran
Attorney for Heller Financial,
Inc. for the purpose of this
filing

JWD:caz

P&W F
RECORDATION NO. 15069
OCT 14 1986 10-30 AM
Filed & Recorded
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT

ASSIGNMENT AGREEMENT dated as of September 30, 1986 (hereunder called this Assignment), by and between ITTEL RAIL CORPORATION, a Delaware corporation (the "Borrower"), and HELLER FINANCIAL, INC., a Delaware corporation (the "Secured Party").

WITNESSETH:

WHEREAS, the Secured Party has entered into a Loan and Security Agreement (hereinafter called the "Loan Agreement") of even date herewith with the Borrower, pursuant to which the Secured Party has agreed to lend to the Borrower, subject to the terms and conditions of the Loan Agreement, up to Eighty Million Dollars (\$80,000,000); and

WHEREAS, the Borrower and Providence and Worcester Company ("P&W") have entered that certain Agreement (Flatcars) dated September 12, 1980 and the related letter agreement of even date therewith (collectively, the "Agency Agreement"); and

WHEREAS, in order to provide security for the obligations of the Borrower under the Loan Agreement, the Borrower agrees to assign for security purposes its rights to and under the Agency Agreement to the Lender;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto hereby agree as follows:

1. The Borrower hereby assigns, transfers and sets over to and unto the Lender, as continuing collateral security for the payment and performance of the Borrower's obligations under the Loan Agreement, all of the Borrower's rights, title, and interest, powers, privileges, and other benefits under the Agency Agreement, including, without limitation, all rights to all fees and other sums payable to or receivable by the Borrower from P&W or otherwise under or pursuant to the provisions of the Agency Agreement, (such moneys being hereinafter called the "Payments"). In furtherance of the foregoing assignment, transfer and setting over, the Borrower hereby irrevocably authorizes and empowers the Lender in its own name, in the name of its nominee, or in the name of the Borrower or as its attorney, after the occurrence of an Event of Default under the Loan Agreement, to ask, demand, sue for, collect, and receive any and all the Payments to which the Borrower is or may become entitled under the Agency Agreement, and to enforce compliance by P&W with all the terms and provisions thereof.

2. This Assignment is executed only as security for the obligations of the Borrower under the Loan Agreement and, therefore, the execution and delivery of this Assignment shall not subject the Lender to, or transfer, or pass, or in any ways affect or modify, the liability of the Borrower under the Agency Agreement, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Borrower to P&W shall be and remain enforceable by P&W, its successors and assigns, against, and only against the Borrower or persons other than the Lender. This Assignment is being executed by the Borrower on its own behalf and not as agent for, or on behalf of any other person.

3. To protect the security afforded by this Assignment, the Borrower agrees as follows:

(a) The Borrower will faithfully abide by, perform, and discharge each and every obligation, covenant, and agreement in all material respects which the Agency Agreement provides is to be performed by the Borrower;

(b) At the Borrower's sole cost and expense, the Borrower will appear in and defend and at its discretion litigate or settle every action or proceeding against the Borrower arising under, growing out of, or in any manner connected with the obligations, duties, or liabilities of the Borrower under the Agency Agreement;

(c) Should the Borrower fail to make any payment or to do any act which this Assignment requires the Borrower to make or do, then the Lender may, but without obligation so to do, and without releasing the Borrower from any obligation hereunder, make or do the same in such manner and to such extent as the Lender may deem necessary to protect the security provided hereby, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Lender, and also the right to perform and discharge each and every obligation, covenant, and agreement of the Borrower contained in the Agency Agreement, and in exercising any such powers, the Lender may pay costs and expenses, employ counsel, and incur and pay attorneys' fees, and the Borrower will reimburse the Lender for such costs, expenses and fees; and

(d) The Borrower shall not amend or terminate the Agency Agreement without the prior consent of the Lender, which shall not be unreasonably withheld.

4. Upon the full and final discharge and satisfaction of all of the Borrower's obligations under the Loan Agreement and this Assignment, all rights herein assigned, transferred and set over to and unto the Lender shall terminate, and all estate,

right, title, and interest of the Lender in and to the Agency Agreement shall revert to the Borrower.

5. The Borrower will, from time to time, do and perform any other act and will execute, acknowledge, and deliver and file, register, deposit, and record (and will refile, reregister, rerecord, or redeposit whenever required) any and all further instruments required by law or requested by the Lender in order to confirm or further assure the interests of the Lender hereunder.

6. If an Event of Default shall occur and be continuing under the Loan Agreement, the Lender may assign all or any of the rights assigned to it hereby or arising under the Agency Agreement, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Lender hereunder.

7. The provisions of this Assignment shall not be deemed to restrict or otherwise limit in any respect any rights granted to the Lender in or with respect to the Leases pursuant to the Loan Agreement. In the event any term or condition hereof is inconsistent with any term or condition contained in the Loan Agreement, such term or condition contained in the Loan Agreement shall be deemed controlling.

8. This assignment shall not enlarge or diminish the rights or duties of P&W under the Agency Agreement, and, in particular, shall not subject P&W to the jurisdiction or the laws of any place, the jurisdiction or laws of which it would not otherwise be subject to under the Agency Agreement.

9. This Assignment shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, all as of the date first above written.

ITEL RAIL CORPORATION

By: Howard S. Chabir
Its: Authorized Officer (Asst. Secy)

HELLER FINANCIAL, INC.

By: RH Jan
Its: ACP

STATE OF *Illinois*)
)
COUNTY OF *Cook*)

On this 30th day of ~~October~~ ^{September}, 1986, before me personally appeared Howard L. Chabner, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of IteL Rail Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Martha L. Mathis
Notary Public

(NOTARIAL SEAL)

My Commission expires: *March 31, 1990*

STATE OF *Illinois*)
)
COUNTY OF *Cook*)

On this 30th day of ~~October~~ *September*, 1986, before me personally appeared Howard L. Jessen, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President of Heller Financial, Inc. that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Martha L. Maths
Notary Public

(NOTARIAL SEAL)

My Commission expires: *March 31, 1990*

JWD/044/D3/10-06-86